A.F.R.

(23)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH; HON'BLE SHRI K.H.N. KURANGA, CJ
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.720 OF 2001

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE THE CHIEF JUSTICE

I agree

Sd/-
Chief Justice

POST IT FOR: 7/4/05/2003

Sd/-
L.C. Bhadoo
Judge

(24)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH:- HON'BLE SHRI K.H.N. KURANGA, CJ
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.720 OF 2001

APPELLANT/ ACCUSED	Smt. Saraswatibai Wife of Bhagwat Sahu, Aged 38 years, resident of Sandi, P.S. Mandir Hasoud, District Raipour.
	VERSUS
RESPONDENT :	State of Chhattisgarh

Present: Shri S.K. Mishra, counsel for the accused/appellant.
Miss. Sharmila Singhai, Dy. Govt. Adv., for the State/respondent.

J U D G M E N T
(Delivered on 7th of May, 2003)

The following judgment of the Court was delivered by **L.C. Bhadoo, J** :-

Accused/appellant Saraswatibai has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment of conviction dated 23/07/2001 passed by the learned Seventh Additional Sessions Judge, Raipur by which the learned Additional Sessions Judge after holding the above accused/appellant guilty of the offence under Sections 302 and 309 of

the Indian Penal Code convicted her under the said Sections and sentenced her to undergo imprisonment for life and to undergo simple imprisonment for one year; respectively.

(2) The relevant prosecution story for the disposal of this criminal appeal is that the accused/appellant was living in village Sandi along with her daughter Santoshi Bai (since deceased) aged about five years. The accused is a lady of weak mind and she used to earn her livelihood by begging. She is also a lady of ill temperament. On the fateful day when the daughter of the accused demanded water, the accused became angry and took her to a well. She took her belongings and jumped in the well along with her daughter Santoshi Bai and belongings. At that time, PW-7 Laxman was passing through. On hearing the scream 'save save', he peeped into the well and he started raising the cries. On that, the villagers assembled and took out the accused and the deceased by a rope. By that time Santoshi Bai was already dead. The belongings of the accused/appellant were also taken out. The village Kotwar namely Dev Singh Chouhan reported the matter to Mandir Hasoud Police Station and the Police registered Merg report (Ex.P/3). The Investigating Officer after reaching the scene of occurrence prepared the Panchanama (Ex.P/5) of the dead body of deceased Santoshi Bai was prepared and post mortem of the dead body was got conducted. The belongings of the accused/appellant were taken into possession. The first information report (Ex.P/10) was registered and after completion of the investigation, challan was filed against the accused/appellant under Sections 302 and 309 of the Indian Penal Code.

(3) Learned Additional Sessions Judge framed the charges against the accused/appellant which she denied and said that she has been falsely implicated. She fell in the well on account of the darkness and she raised the cries 'save save'; thereafter the villagers came and took her out. She is innocent. In order to prove the charges against the accused/appellant the prosecution examined in all ten witnesses at the trial. The statement of the accused/appellant under section 313 of the Code of Criminal Procedure was also recorded. She denied the statements of the witnesses. However, she admitted that she fell in the well and she was taken out by the villagers and in the last she has said that when she was coming to her house due to the darkness she fell in the well and she raised cries 'save save', thereafter the villagers came and she was taken out from the well. She is innocent.

(4) After hearing the arguments of the learned Public Prosecutor and the learned counsel for the accused, the learned Additional Sessions judge convicted and sentenced the accused by the impugned judgment.

(5) We have heard the learned counsel for the accused/appellant and also learned Dy Govt. Advocate for the State/respondent.

(6) Learned counsel appearing for the accused/appellant argued that since the well in which the accused along with her daughter Santoshi Bai fell was on the level of the land and there was no parapet wall around the well and due to the darkness in the night the accused/appellant could not notice the well and she fell down in the well along with her daughter and belongings. Moreover, the accused/appellant is a lady of weak mind. Her mental condition was also

not perfect and she used to earn her livelihood by begging. There was no occasion for her to jump in the well with the intention to murder her own daughter and to commit suicide.

(7) In order to appreciate the arguments of the learned counsel appearing for the accused/appellant, we have perused the evidence available on record. PW-1 Dr. Sanjay Kumar Dadoo has said that he conducted the autopsy on the dead body of deceased Santoshi Bai and said that the deceased died on account of asphyxia due to drowning in the water. PW-2 Kuleshwar Prasad Sahu, brother of the accused/appellant, has said that the accused is of weak mind and she used to earn her livelihood by begging. The accused used to live in their village. The village Kotwar informed him that after throwing her daughter in the well the accused/appellant herself jumped into the well. It is true that the well is on the side of the road and in the night there was darkness and there is no parapet wall around the well and it is on the level of the land. The Kotwar came to his house and informed about the incident. PW-3 Patwari Dilip Kumar Naik has said that he prepared the map (Ex.P/4). PW-4 Assistant Sub Inspector T.R. Dewangan has said that the village Kotwar gave him Merg intimation on the basis of which he registered Merg No.60/2000 which is Ex.P./3. He reached the spot and prepared Ex.P/4, Panchanama (Ex.P/5) of the dead body and the sent the dead body for post mortem examination vide Ex.P/6. The accused/appellant was medically examined on 05/12/2000 in the Primary Health Center, Mandir Hasoud. He also seized the belongings of the accused vide Ex.P/7. The site map (Ex.P/8) was prepared. After completing usual formalities and recording the statements of the witnesses, he filed the challan. It is correct to say that the Kotwar of the village informed him that the

accused was mentally ill lady and she used to earn her livelihood by begging. It is also correct that the well is adjacent to the street. PW-5 Dr. K.S. Rai has said that he medically examined the accused, and three abrasions and one swelling were found on the body of the accused/appellant. PW-6 Kotwar Dev Singh Chouhan has said that on the fateful day in the night at about 8.30 after taking meal he went for stroll. He came back after hearing the noise. The noise was coming from the side of Mahaveer Chowk. He reached near the well situated at Mahaveer Chowk and saw that lot of persons were standing there and the accused was sitting there. The child of the accused was dead and on enquiry the accused was weeping. He gave the information to the Police. It is correct to say that the well in which the deceased fell down is at the level of the land and there was no parapet wall around the well and it is also correct that there is no light there and the well is adjacent to the road. PW-7 Laxman has said that on the fateful day when he was going to the shop at around 8.30 in the night when he reached near the Lethara well the voice of 'save save' was coming from the well. He went to the house of one Kanhaiya and thereby the people of the vicinity collected there and the accused and her daughter were taken out of the well and on enquiry the accused informed that you people are not giving water that is why she jumped into the well. In cross examination, he has said that it is correct that the accused behaved like a mad person. It is also correct that the well is on the level of the land and there is no parapet wall around the well. At that time there was darkness. PW-8 Upenda Diwan has also said that after hearing the scream he reached the site. On enquiry from the villagers the accused said that she fell in the well. The mental condition of the accused is not well. PW-9 Ramadhar has said that after hearing the noise he reached the site. The villagers were also present there. The

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people took out the deceased after tying her from a rope. The accused was weeping and by that time she did not disclose anything and thereafter he came back. PW-10 Ajit Kumar Rao has also said that on the fateful day in the night he was going for stroll towards the pond. On the way there is Lathera locality and he saw that the villagers took out the accused and her daughter from the well. The accused did not disclose anything in his presence.

(8) In view of the above evidence, there is no eye witness or direct evidence who saw the accused/appellant jumping into the well. PW-10 Ajit Kumar Rao has said that on enquiry the accused has not said anything. PW-9 Ramadhar has also said that the accused did not say anything in his presence. Whereas PW-8 has said that on enquiry the accused/appellant informed that she fell in the well. PW-6 Kotwar Dev Singh Chouhan has also said that on enquiry the accused was weeping and she had not said anything. The only witness Laxman has said that on enquiry the accused/appellant informed that you people did not give the water, therefore, she jumped into the well. But the statement of this witness has not been supported by any of the person who was also present on the scene of occurrence. He has said that the accused was weeping and she said nothing. Therefore, virtually there is no evidence in this case, which shows that the accused jumped into the well to commit suicide and with intention to murder the deceased. It has also come on record that almost every witness has said that the well is adjacent to the road and there is no parapet wall around the well and the time of the incident was 8.30 in the night and there was darkness at that time and almost every witness has said that the accused is a lady of weak mind and earned her livelihood by begging. Therefore, the explanation offered by the accused that due to darkness she fell down

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in the well along with her belongings appears to be correct. Therefore, the finding of the learned trial Court that the accused jumped into the well with intention to murder her own daughter and to commit suicide is based on no legal evidence and there is no convincing evidence to maintain the finding of the trial Court. Therefore, the judgment of the trial Court cannot be sustained which is liable to be set aside.

(9) In the result, the appeal of the accused/appellant is allowed. The conviction and sentence awarded to the accused appellant by the learned trial Court are set aside. The accused appellant is acquitted of the charges under Sections 302 and 309 of the Indian Penal Code and she be set at liberty forthwith if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Brajesh*